

#2017-28

EDWARD A. BERKOVICH

REC'D MAR 20 2017  
JP

Sent by email and by regular U.S. mail

APPEAL OF CHIEF ADMINISTRATIVE OFFICER'S NON-DECISION

March 18, 2017

Nova Dubovik  
Executive Secretary  
State Records Committee  
346 S. Rio Grande  
Salt Lake City, UT 84101-1106  
Phone: 801-531-3834  
E-mail: [ndubovik@utah.gov](mailto:ndubovik@utah.gov)

Dear Ms. Dubovik:

I sent the attached GRAMA appeal to the chief administrative officer of Millard County, which was received on March 7, 2017. (Attachments, p. 1, delivery verification). Five (5) business days have passed and I have received no response. I am appealing that constructive denial to the State Records Committee.

Note regarding attachments: they are numbered at the bottom right-hand corner of the page with hand-printed numbers. I do not have a Bates stamper. Also, there is some duplication of documents in the attachments. Where a document has already been included in the attachments and referred to, I have stamped a subsequent inclusion of the same document with the word COPY so the reader knows he or she is not seeing a document for the first time. I have done this to obviate the reader flipping back and forth in the attachments, and to make the chronology easier to follow.

Name, mailing address, and daytime telephone number of the records committee appellant:  
This information is at the top of this letter.

Copy of the decision being appealed: There is no decision accompanying this appeal because the chief administrative officer has not responded to my appeal.

The relief sought: A response to my GRAMA appeal to the chief administrative officer of Millard County; specifically, a copy of the minutes sent by Ms. Stevens on October 22, 2015, as more fully described below.

Summary: Millard County acknowledges that it has the minutes referred to immediately above, but Millard County has not provided them to me.

Short statement of facts:

1. On October 21, 2015, at 3:00 p.m., an emergency meeting of the Utah Prosecution Council (UPC) was held in Salt Lake City. (Attachments, p. 2, organizational chart of UPC). That meeting was about my employment status.
2. Ms. Christine Stevens, of the Millard County Attorney's Office, attended that meeting in her capacity as a UPC board member.
3. Ms. Stevens took notes at that meeting. (Attachments, pp. 3-5, letter from Robert Church, UPC Director, to Parker Douglas, Utah Attorney General's Office; see also, Attachments, p. 6, letter from Patrick Finlinson, Millard County Attorney, to me).
4. Ms. Stevens went back to Millard County and prepared the minutes of that meeting. (Id.)
5. On October 22, 2015, less than 24 hours after that meeting ended, Ms. Stevens sent the minutes she had prepared to Bob Church, UPC Director. (Id.; see also, Attachments, p. 7, Ms. Stevens' email to Mr. Church).
6. About fifteen months later, on January 25, 2017, I sent a GRAMA request to the Millard County Recorder, requesting copies of those minutes, the cover email or letter sent with them, and Ms. Stevens' notes from which she prepared those minutes. I sent a duplicate two days later to the Millard County Attorney. (Attachments, pp. 8-13, copy of that GRAMA request).
7. I received no response to that GRAMA request, so I appealed to the chief administrative officer of Millard County. (Attachments, pp. 14-24, copy of that appeal).
8. On February 28, 2017, at 1:31 p.m., Patrick Finlinson, Millard County Attorney, phoned me and left a voicemail message. In that message he stated: (1) he had just received that appeal; (2) he had already sent a responsive letter to my GRAMA request; (3) apparently I did not get his letter; (4) Millard County had no records responsive to my GRAMA request; (5) he would re-send the letter; (6) I should call him back if I had any questions. (I have preserved that voicemail message in two places). See paragraph 10 below for further about that voicemail message.
9. When I phoned him back on February 28, 2017, at 2:14 p.m., Mr. Finlinson stated similarly to his phone message referred to in paragraph 8 immediately above. While on the phone we agreed he would re-send me his responsive letter to my GRAMA request via email by 5:00 p.m. I received that letter via email at 3:05 p.m. It explained that Millard County had none of the records I requested, due to the reasons stated therein, and thus Millard County was "not able to provide any of the records you are looking for." (Attachments, p. 25, copy of that letter).

sent  
GRAMA  
Req.

CAD  
Received  
Appeal

- a. Curiously, as an aside, that letter was slightly misaddressed. And, oddly, only the address line containing the misaddress was italicized for some reason. Maybe the misaddress is why I did not receive it until I appealed to the chief administrative officer, after which Mr. Finlinson phoned me and agreed to resend. At any rate, the date on that letter is February 1, 2017.
10. Notwithstanding his letter dated February 1, 2017, Mr. Finlinson's February 28, 2017, 3:05 p.m., email to me explained that they really do have two of the three records after all (Attachments, p. 26, copy of that email). They are:
- a. The cover email (similar to a cover letter) that Ms. Stevens sent way back on October 22, 2015, to Bob Church, UPC Director. The minutes I seek were and are attached to that sent email. Apparently, on February 28, 2017, between 2:14 p.m. (when Mr. Finlinson and I talked on the phone) and 3:05 p.m. (when Mr. Finlinson sent me his email), Ms. Stevens had found the cover email I requested, and the minutes I requested, but only the cover email has been provided to me. These documents were both in her personal Yahoo! email account, Google and Bing searches for Ms. Stevens' personal Yahoo! account indicate she uses it for UPC board work and for other board-related work.
  - b. The minutes I requested. Millard County has not provided this document to me and this document is the subject of this appeal.
  - c. Ms. Stevens' notes. She destroyed them. (Attachments, p. 25). This is sometimes common practice once final minutes have been prepared and approved.
    - Curiously, in his voicemail message left on February 28, 2017, at 1:31 p.m., when referencing my request for Ms. Stevens' notes, Mr. Finlinson states that "she [Ms. Stevens] did not bring any notes home with her from that meeting [on October 21, 2015]," when she returned from Salt Lake City to Millard County. But his letter dated February 1, 2017, indicates that Ms. Stevens had notes from that meeting, from which she prepared the minutes, after which she emailed the minutes to Mr. Church, after which she destroyed her notes. In other words, after a letter dated February 1, 2017, slightly misaddressed, with only the line containing the misaddress in italics, stating Ms. Stevens did in fact have notes, he left me a voicemail message saying Ms. Stevens did not bring home notes. I observe this only as a curiosity.

11. Regarding the minutes themselves, sent as an attachment to the cover email in paragraph 10.a. above, which is the government record I am requesting, Millard County acknowledges that it has that document, and it is being preserved. (Attachments, p. 26). But Millard County has not provided it. I am told that document cannot be opened from the email to which it is attached. Very specifically, the minutes that Ms. Stevens prepared and emailed as an attachment to UPC Director Bob Church way back on October 22, 2015, is what Millard County has preserved. But Millard County has not provided that to me.

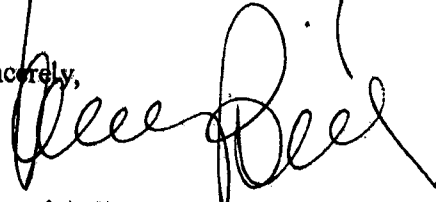
12. On March 3, 2017, I appealed to the chief administrative officer of Millard County (Attachments, pp. 27-31), requesting:

- a. That Ms. Stevens forward me the October 22, 2015, email with the attachment of the minutes that apparently cannot be opened.
- b. That Millard County search for the document in one of the first places a reasonable person would think to look for it, which is the PC or other device that Ms. Stevens used to type the minutes. Mr. Finlinson's email to me on February 28, 2017, skips right over that obvious place to look, and only discusses the document as an attachment to an email. See my appeal to the chief administrative officer for further about that.

13. More than five (5) business days have passed, and I have received no response to my appeal to the chief administrative officer of Millard County. Thus, I appeal that constructive denial to the State Records Committee.

Service: See below in the cc's. Note: a previous email service to the chairman "bounced back," though my emails to the other two county officials do not appear to have "bounced back."

Sincerely,



Edward A. Berkovich

**Attachments**

cc: Patrick Finlinson, Attorney (by email)  
Connie Hansen, Recorder (by email)  
Jim Withers, Chairman (by email and regular U.S. mail)